

STATE OF SOUTH CAROLINA

(Caption of Case)

Application of Ashley Oaks Water System, Inc. for
Approval of a Transfer of its Water System to the
City of Columbia

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2007 - 41 - W

(Please type or print)

Submitted by: Charles H. Cook

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other: _____

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certificatio
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigatio
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input checked="" type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input checked="" type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

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September 7, 2007

VIA HAND DELIVERY

Mr. Charles L.A. Terreni
Chief Clerk/Administrator
SC Public Service Commission
101 Executive Center Dr., Ste. 100
Columbia, SC 29210

COPY
Posted: ted
Dept: S.A.
Date: 9/7/07
Time: 12:10

RECEIVED
2007 SEP -7 AM 11:21
SC PUBLIC SERVICE COMMISSION

RE: Application of Ashley Oaks Water System, Inc., for Approval of a
Transfer of its Water System to the City of Columbia
Docket No.: 2007-41-W


Dear Mr. Terreni:

Enclosed please find the original and one copy (1) of the proposed **Order Extinguishing Easements Not Transferred to City of Columbia and Confirming Ownership of Properties Belonging to Intervenor Stewart G. and Roberta C. Young** filed on behalf of Stewart G. and Robert C. Young. in the above referenced docket. By copy of this letter, I am serving all parties of record.

I have enclosed an extra copy of this order which I would ask you to date stamp and return to me through my courier. If you have questions or need additional information, please do not hesitate to contact me.

Very truly yours,

Elliott & Elliott, P.A.


Charles H. Cook

CHC/mlw

Enclosures

cc: All Parties of Record

RETURN DATE: N/A
SERVICE: OR

ORIGINAL

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2007-41-W – ORDER NO. 2007-_____

SEPTEMBER ____, 2007

IN RE: Petition of Ashley Oaks Water)	ORDER EXTINGUISHING
System, Inc. for Approval of a)	EASEMENTS NOT
Transfer of Its Water System)	TRANSFERRED TO CITY OF
to the City of Columbia)	COLUMBIA AND CONFIRMING
)	OWNERSHIP OF PROPERTIES
)	BELONGING TO INTERVENORS
)	STEWART G. AND ROBERTA C.
)	YOUNG

RECEIVED
2007 SEP -7 AM 11:32
SC PUBLIC SERVICE
COMMISSION

This matter comes before the Public Service Commission of South Carolina (“Commission”) as a result of matters addressed in Docket No. 2007-41-W – Order No. 2007-401 dated May 25, 2007, and incorporated herein by reference.

A Notice of Filing one time in a newspaper of general circulation in the Company’s service area was complied with according to the instructions of the Commission’s Docketing Department. A review of all filed documents by Ashley Oaks with the docket indicates only the filing of notice was sworn to by the Company or its owner as reflected by an affidavit to show compliance.

An Application was received January 29, 2007, pro se by Michael D. Shelley for Ashley Oaks Water System, Inc.; such filing being in derogation of the Commission’s regulations for a corporate utility.

A Petition to Intervene was received from Stewart G. and Roberta C. Young (“the Youngs”). The Youngs properly filed their Petition to Intervene which established that they both respectively, as husband and wife, are paying customers for water service from Ashley Oaks and would be affected by the transfer.

The Youngs further alleged they were affected by the fact that the Applicant water company is drawing water from a well owned by the Youngs and located upon property owned upon their property.

The Youngs also referenced the Commission's Order No. 2001-075 in Docket No. 1998-338-W, dated January 25, 2001, which inter alia required Ashley Oaks Water System to "demonstrate ownership or an easement to the private well located on the property of Ms. Roberta Young. The Young's further alleged their rights would be substantially affected by the decisions of this proceeding (docket) since Ashley Oaks proposed to sell all of its interest in the "water system" to the City.

Subsequently, a Petition to Intervene out of Time was received from Ashley Oaks Phase I Homeowners ("the HOA").

The Commission appointed a hearing officer to the docket, and subsequently all parties, including the Office of Regulatory Staff consented to expedited review and recommendation for transfer of the water system to the City. The Commission finding no parties objected to the transfer under Regulation 103-704 granted a Certificate of Transfer to the City as being in the public interest.

The Commission granted and approved the transfer subject to the terms of the agreement between Ashley Oaks and the City and further, as a final condition that the Young's claim would be heard. The Commission's reservation of the issue of the Young's claim was a condition to the transfer.

On May 21, 2007, Mr. William E. Booth, III filed a Notice of Appearance on behalf of Ashley Oaks Water System, Incorporated. On July 30, 2007, a letter was filed with this docket by William E. Booth, III for Ashley Oaks Water System, Incorporated stating that neither he nor his client, the Applicant, would attend the hearing reserved for the Intervenor Stewart and

Roberta Young as a condition for the transfer of the Ashley Oaks Water System, Incorporated to the City of Columbia.

The hearing for this matter came to be heard on August 2, 2007. Aside from the Intervenor Youngs, only the Office of Regulatory Staff (“ORS”) appeared. Ashley Oaks Phase I Homeowners Association through its attorney notified the Commission it would not attend or participate. As stated, the Applicant did not appear.

Charles H. Cook, of counsel to the firm of Elliott & Elliott, PA represented Stewart and Roberta Young, Intervenor. Mr. Cook provided an opening statement, showing to the Commission that the notice to the public, as well as statements filed of record by the Applicant were in conflict with rights of the Intervenor, Youngs. Mr. Cook pointed out that the notice the public received indicated that the water system was being sold to the City without any exceptions about wells not being transferred. Also, it was the position of the Intervenor Youngs that any easement which was used for the Ashley Oaks Water System and not transferred to the City should be extinguished by operation of law and requested a finding to that effect be determined by the Commission.

Evidence

Mr. Cook called Dr. Stewart Greg Young, who after being duly sworn, was directly examined. Dr. Young provided a history of his and his wife’s ownership of their property located at 1724 Fulmer Road in Blythewood, South Carolina.

Dr. Young bought the property in 1999 from Michael and Cindy Baum, predecessors in title who acquired the same property from Mr. Shelley, the owner of Ashley Oaks Water System. The testimony revealed that Lots 33 and 34 belonged to the Youngs and that while there existed water easements across the property for the Ashley Oaks Water System, no deeds, plats or title

documents designed any reservations of title to the Youngs well, tank and equipment to Ashley Oaks Water System or to Mr. Michael D. Shelley, Sr., its owner.

. To prove the Young's ownership and testimony, counsel for the Youngs through testimony and recognition by Dr. Young introduced Exhibits 1 through 11 which represented the following evidence:

1. Deed from the Baums to the Youngs;
2. Deed from Shelley, owner of Ashley Oaks to the Baums;
3. Corrective Deed of half interest to Ms. Roberta Young;
4. Corrective Deed of Michael Shelley to the Baums allowing two horses;
5. Restrictive Covenants of the homeowner's Association;
6. Letter from Michael D. Shelley, Sr. of Ashley Oaks Water System to the Youngs promising to return any wells used to owners of land upon which such wells existed;
7. Letter from Michael Shelley, Sr. of Ashley Oaks to the Youngs requesting \$2,000 to return the well and easement under a quitclaim deed;
8. Plat of the Youngs' property showing lots 33 and 34;
9. Master Plat of Phase 1 and 2 for Ashley Oaks Subdivision;
10. Plat, showing the original conveyance to Mike and Cindy Baum;
11. Late-filed exhibit filed by the Youngs proving taxes paid for years owned of lots 33 and 34 which did not separate improvements such as the Youngs' well, tank or equipment, and other out buildings.

Dr. Young on direct examination confirmed that there was never any evidence of ownership in his chain of title showing that the well and tank belonged to anyone separate from his deed(s) and plat at the time lots 33 and 34 were purchased.

Next, Dr. Young was excused and Roberta C. Young was called to the stand and duly sworn.

On direct examination, Mrs. Young confirmed agreement with the testimony and evidence presented by her husband, Stewart Greg Young.

Mrs. Young read a statement to the Commission as part of her testimony which related to Docket Number 198-338-W and Order Number 2201-075 entered into the record as Exhibit 12. The Commission took judicial notice of the Docket and Order.

Mrs. Young read from the Order the following Number 3, “Ashley Oaks shall file the appropriate legal documentation with the Commission demonstrating easement, ownership as an easement to the private well located on the property of Mrs. Young, Roberta Young.”

Mrs. Roberta Young upon direct questioning testified that the Ashley Oaks Water System never obeyed the Order Number 2001-075 of the Commission.

Mrs. Young presented photographs of Lots 33 and 34, together with pictures of the Young’ well and tank, the fence lines and house and Fulmer Road frontage. All of the photographs were admitted into evidence as Exhibit Number 13. Finally, a newspaper article quoting Michael Shelley was introduced as Exhibit 14 from *The State*, June 14, 2007. Mrs. Young read from the article which referenced that Mr. Shelley was quoted as stating all of the wells were dried up and that he never should have been in the water system business.

Roberta Young was asked on direct examination if she favored the transfer of the water system to the City to which she replied she was very happy about the transfer.

At the end of the presentation of the case and evidence, counsel for the Intervenor Youngs, moved before the Commission for its determination that the well and tank were the private property of the Intervenor Youngs; that previous easements across the lands of Ashley Oaks Water System customers were “easements in gross” and by operation of law should be extinguished since not transferred to the City of Columbia; that the Commission has jurisdiction

over the matters intervened by the Youngs to clear discrepancies in published notice to the public and to return easements no longer used for a water system under authority of the Commission to the grantors being the landowners. Mr. Cook's motion paralleled the legislative intent of Title 33 Corporations, Partnerships, Associations, Article II entitled Dissolution. Further Mr. Cook distinguished for the Commission that the water system easements not transferred to the City were under the law, "easements in gross" which meant no reason for existence would sustain the defunct water system's continued right to use such easements. Mr. Cook reaffirmed in this motion that the Youngs' issues were not private matters outside of the Commission's jurisdiction since the authority of the Commission was to grant territory, transfer systems and to withdraw authorities to operate utility rights.

Finally, Mr. Cook's motion requested that the Applicant Ashley Oaks Water System, Inc. be found to be in default of the Commission's Orders and to have waived any further rights as to any claims in the property belonging to the Youngs.

Findings of Fact and Conclusions of Law

1. That the Intervenors Stewart G. Young and Roberta C. Young property intervened as customers and parties of interest in this matter involving a public utility as defined by S.C. Code Section 58-5-10(3) and this Commission has jurisdiction over the matters alleged in this docket pursuant to the legislative authority delegated to it under the State's exercise of its police powers.
2. That this Commission, in cases such as that before it, has the authority and duty to determine and declare the rights of the parties with respect to the extinguishment of easements or licenses no longer authorized or needed to sustain the transferred water utility. (E. L. Long Motor Lines v. South Carolina Public Service Commission; 233 S.C. 67; 103 S.E.(2d) 762; Sheppard v. Justin Enterprises, 2007 SCCA 4245 – 051407; Windham v. Riddle, 2006 S.C. (4145); V. Les Springob, Appellant, v. Michael L. Farrar and Yvonne Farrar, Respondents, 334 S.C. 585; John M. Tupper v. Dorchester County, 326 S.C. 318)

3. That based upon the unrefuted evidence and testimony before this Commission in this matter that it is in the public interest for this Commission to uphold the rights of private owners when clearly such rights are being violated by virtue of a transfer of this water system without extinguishing a utility's previous easement or license no longer having a reason to exist.

4. That any and all easements previously granted to the Ashley Oaks Water System, Inc. by the predecessors in title to the Youngs which were not transferred to the City of Columbia and are no longer used by or for the public utility are hereby extinguished.

5. That Ashley Oaks Water System, Inc. and its owner, Michael D. Shelley, Sr. must cease and desist from entering upon the properties belonging to Intervenor Stewart G. Young and Roberta C. Young; and to do so without the express permission of the Intervenor would constitute a trespass upon the Young's property. We find that any attempt to take from the Young's property their well equipment, water tank or well head is unauthorized.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. Any and all easements previously granted by landowners to Ashley Oaks Water System, Inc. not transferred to the City of Columbia and no longer used for an authorized utility are hereby extinguished and ordered as being returned to respective grantors.

2. The Applicant Ashley Oaks Water System, Inc. is in default and has waived all rights in the matters decided hereupon for failure to participate and be cross examined.

3. The Ashley Oaks Water System, Inc. and its owner, Michael D. Shelley, Sr. are hereby ordered to cease and desist from entering upon the properties belonging to Intervenor Stewart G. Young and Roberta C. Young or to attempt to take from their property any well equipment, water tank or well head.

4. Intervenor Stewart G. Young and Roberta C. Young are released from any obligation to furnish water from their well and water tank to Applicant or to provide any further use of their

land to the Ashley Oaks Water System, Inc. and Michael D. Shelley, Sr., the former utility's owner.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

G. O'Neal Hamilton, Chairman

ATTEST:

C. Robert Moseley, Vice Chairman
(SEAL)

ORIGINAL

CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that (s)he has served below listed parties with a copy of the pleading(s) indicated below by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

RE: Application of Ashley Oaks Water System, Incorporated.
for Approval of a Transfer of Its Water System to the City
of Columbia

DOCKET NO.: 2007-41-W

PARTIES SERVED: Nanette S. Edwards, Esquire
Office of Regulatory Staff
P.O. Box 11263
Columbia, SC 29211

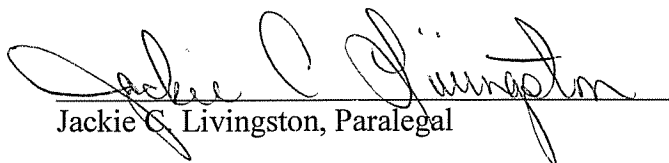
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RECEIVED
2007 SEP -7 AM 11:32
SC PUBLIC SERVICE
COMMISSION

PLEADING: Order Extinguishing Easements Not Transferred to City of
Columbia and Confirming Ownership of Properties
Belonging to Intervenor Stewart G. and Roberta C. Young

September 7, 2007


Jackie C. Livingston, Paralegal